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## Concluding Remarks

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## CONCLUDING REMARKS

ROSEMARY C. SALOMONE†

The topic of our afternoon panel, “Achieving Diversity in the Classroom,” grows out of the Supreme Court’s most recent landmark decisions on affirmative action. In *Gratz v. Bollinger*<sup>1</sup> and *Grutter v. Bollinger*,<sup>2</sup> a severely divided Court affirmed the narrow use of race in university admissions. The Court, however, made clear that institutions could not base their decisions solely on race but must seriously consider “all the ways an applicant might contribute to a diverse educational environment.”<sup>3</sup>

For a majority of the justices, diversity would not serve as an end in itself but as a means to promote the broader and longer national good. The argument runs as follows. A racially diverse student body produces educational, social, and economic benefits. Most importantly, it expands the pool of qualified national leaders and promotes cross-racial understanding. In doing so, diversity prepares students for citizenship in an increasingly diverse workforce and society. According to the Court, the interchange among students with “widely diverse . . . cultures, ideas, and viewpoints” generates classroom discussion that is “livelier, more spirited, and simply more enlightening and interesting.”<sup>4</sup> Furthermore, the better students come to comprehend and respect each other’s views and “acquire the tools for civil discourse,” the more amicably they can live together in the present and in the future.<sup>5</sup> But the Court also warned that universities must first explore race-neutral alternatives as a way to achieve a diverse student body and that

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<sup>1</sup> 123 S. Ct. 2411 (2003).

<sup>2</sup> 123 S. Ct. 2325 (2003).

<sup>3</sup> *Id.* at 2343.

<sup>4</sup> *Id.* at 2340 (internal quotations omitted).

<sup>5</sup> Rosemary Salomone, *The Power of Language in the Classroom*, 19 THOUGHT & ACTION 9, 10–11 (2004).

any use of race, even as a mere plus factor, must envision a "termination point."<sup>6</sup>

The implications of these rulings immediately became the subject of intense discussion and debate. Legal scholars and political commentators exchanged barbed comments on the theoretical underpinnings and practical utility of the diversity project.<sup>7</sup> One point that eluded some but not others was that the decisions fortuitously emerged just as the nation approached the Fiftieth Anniversary of *Brown v. Board of Education*.<sup>8</sup> The connection between these two points in legal time cannot be underestimated. Tying the two together is a firm conviction that education plays a pivotal role in creating good citizens and, as the Court noted on both occasions, "maintaining the fabric of society."<sup>9</sup>

*Brown* was a cataclysmic ruling that gradually, but decidedly, changed the power configuration and focus of public schooling in the United States. By 1954, race as the irresolvable moral dilemma had become a national moral disaster.<sup>10</sup> In the following years, it slowly transformed into an agenda for social and, particularly, educational reform. Speaking in a unanimous voice, the early Warren Court stated that because of "the importance of education to our democratic society . . . the opportunity of an education . . . where the state has undertaken to provide it, is a right which must be made available to all on equal terms."<sup>11</sup> That pronouncement gave legal weight and moral force to an era of crucial change from a *nondiscrimination* to an *integration* model with equality as its guiding principle. In the context of the decision and the year 1954, equal educational opportunity initially meant, at a minimum, equal treatment to an education in a non-segregated setting. It subsequently came to mean much more. What began in *Brown* as equality premised on respect for the individual slowly evolved into a "manifestation

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<sup>6</sup> *Gutter*, 123 S. Ct. at 2346.

<sup>7</sup> See, e.g., Stanley Rothman & Ronald Dworkin, *The Court & the University: An Exchange*, N.Y. REV. BOOKS, Aug. 14, 2003, at 56, 56-57.

<sup>8</sup> 347 U.S. 483 (1954).

<sup>9</sup> *Grutter*, 123 S. Ct. at 2340. The Court, quoting *Brown*, 347 U.S. at 493, also noted that "education . . . is the very foundation of good citizenship." *Id.*

<sup>10</sup> See GUNNAR MYRDAL, 1 *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* 1xxvii-1xxix (1944) (arguing that race relations in America was essentially a moral issue).

<sup>11</sup> *Brown*, 347 U.S. at 493.

of group consciousness and group rights” with clearly articulated racial outcomes.<sup>12</sup>

For half a century, educators, policymakers, and federal judges have struggled against a changing demographic and political landscape to fulfill *Brown*’s promise of equal educational opportunity—that all children are legally entitled to an equal and adequate education regardless of race, ethnicity, or economic circumstances. In the intervening years, school reformers and equity advocates have proposed a number of strategies to achieve that end. Each has met legal, political, and practical obstacles along the way. Those based on race have proven the most contentious and therefore subject to legal challenge—from student assignment policies to achieve racial balance in elementary and secondary schools, to aggressive recruitment efforts and specifically targeted admissions policies that provide access to higher education for racial minority students. Reasonable minds have disagreed sharply on the merits and relative success of these measures.

Now the Court tells us that colleges and universities cannot justify decisions of educational access solely on racial considerations. They must narrowly tailor their admissions policies and practices with attention to the range of individual traits that each applicant presents. This new standard challenges the educational establishment to examine carefully the diversity rationale against the backdrop of *Brown*. Specifically, it compels decision-makers to explore new approaches for maintaining the spirit and momentum of that decision within the specific parameters laid down in *Grutter* and *Gratz*. Obviously, that admonition carries significant implications for higher education. But it may prove even more problematic for elementary and secondary schooling where decisions on student assignment typically are not based on individualized assessments of student characteristics but on broader criteria such as residence and, in some cases, race.<sup>13</sup> In fact, it puts into serious question the entire integration project

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<sup>12</sup> ROSEMARY C. SALOMONE, EQUAL EDUCATION UNDER LAW: LEGAL RIGHTS AND FEDERAL POLICY IN THE POST *BROWN* ERA 194 (1986).

<sup>13</sup> See, e.g., Caroline Hendrie, *City Boards Weigh Rule on Diversity*, EDUC. WK., Nov. 5, 2003, at 1 (discussing confusion among school district leaders in developing alternative strategies for assigning students to schools).

that, for over thirty years, has driven school districts nationwide.<sup>14</sup>

As this Symposium made clear, scholarly opinions on the role that race or diversity should play in education, either as a means or as an end, vary widely. Some question the underlying premises of the racial integration project itself. Richard Kahlenberg, for example, suggests that socio-economics would prove a more effective measure for leveling the educational playing field. According to this argument, every child should have the opportunity to attend a majority middle-class school with motivated, high-achieving peers.<sup>15</sup> Others, like Michelle Adams, endorse a visionary notion of racial integration in which diversity plays a key role, not in itself, but as an adjunct to minority access. Yet there are others who consider diversity as a weak rationale that merely legitimizes elite majority institutions. Juan Perea, for example, maintains that schools and universities should consider the demands of justice and take whatever steps necessary, including race, to achieve those ends. Still others, Peter Schuck among them, view diversity in a more nuanced light. While government has a critical role in promoting diversity as a social ideal and protecting it from invidious discrimination, it should not promote it in any particular form although the private sector may choose to do so.<sup>16</sup>

The debate over race and diversity will go on for years to come. The Court's most recent decisions have merely shifted the ground rules and reset the framework for action. Whether the use of race in the diversity project will have run its course within the next twenty-five years, as Justice O'Connor suggests,<sup>17</sup> remains to be seen. Meanwhile, educators and policymakers will continue to search for constitutionally permissible means to fulfill *Brown's* promise of equal educational opportunity for all. At the same time, as immigration from around the globe continues to cause the United States population to become

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<sup>14</sup> See *Green v. County Sch. Bd.*, 391 U.S. 430, 437-38 (1968) (suggesting that school districts did not merely have the duty to desegregate but the duty to take affirmative steps toward racial integration).

<sup>15</sup> See RICHARD KAHLENBERG, *ALL TOGETHER NOW: CREATING MIDDLE-CLASS SCHOOLS THROUGH PUBLIC SCHOOL CHOICE 1* (Bookings Institution Press 2001).

<sup>16</sup> See PETER H. SCHUCK, *DIVERSITY IN AMERICA: KEEPING GOVERNMENT AT A SAFE DISTANCE* 320-24 (2003).

<sup>17</sup> *Grutter v. Bollinger*, 123 S. Ct. 2325, 2347 (2003).

increasingly diverse, the sheer force of demographics will naturally drive the process in a multiracial and multicultural direction without any government intervention. As the concept of “underrepresented” groups expands, that expansion will render the diversity project more possible but inevitably more complicated.

